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DEPARTMENT OF COMMERCE

International Trade Administration

C-570-982

Utility Scale Wind Towers from the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission ("ITC"), the Department is issuing a countervailing duty order on utility scale wind towers ("wind towers") from the People's Republic of China ("PRC").

EFFECTIVE DATE: (Insert date of publication in the *Federal Register*.)

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SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) of the Tariff Act of 1930, as amended ("Act"), on December 26, 2012, the Department published the final determination in the countervailing duty investigation of wind towers from the PRC.¹ On February 8, 2013, the ITC notified the

¹ See *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012).

Department of its affirmative determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from the PRC.²

Scope of the Order

The merchandise covered by this order are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

² See *Utility Scale Wind Towers from China and Vietnam*, USITC Investigation Nos. 701-TA-486 and 731-TA-1195-1196 (Final), USITC Publication 4372 (February 2013) (“*ITC Report*”).

Merchandise covered by the order is currently classified in the Harmonized Tariff System of the United States (“HTSUS”) under subheadings 7308.20.0020³ or 8502.31.0000.⁴ Prior to 2011, merchandise covered by the order was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Countervailing Duty Order

As noted above, on February 8, 2013, in accordance with section 705(d) of the Act, the ITC notified the Department of its determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from the PRC. Therefore, in accordance with section 706(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (“CBP”) to assess, upon further instruction by the Department, countervailing duties equal to the amount of the net countervailable subsidy for all relevant entries of wind towers from the PRC.

Section 706(b)(1) of the Act establishes a “general rule” that, if the ITC, in its final determination, finds “material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2) {of the Act} would have led to a finding of material injury,” then entries of the subject merchandise, the liquidation of which has been suspended pursuant to the Department’s preliminary determination under section 703(d)(2) of the Act, shall be subject to the imposition of countervailing duties. Section 706(b)(2) of the Act establishes a “special rule” that, if the ITC’s final injury determination is based on the threat of material injury (other than threat of material injury described in the “general rule”) countervailing duties shall be

³ Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

⁴ Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades).

assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination. Under this "special rule," the Department orders CBP to terminate suspension and refund any cash deposit of estimated countervailing duties for entries made since the Department's preliminary countervailing duty determination⁵ and before publication of the ITC's final injury determination.⁶

After reviewing the ITC's final determination, the Department determines that the "special rule" pursuant to section 706(b)(2) of the Act is applicable to the imposition of countervailing duties under this order. Of the votes in the ITC's final determination, two commissioners determined that an industry in the United States is materially injured by reason of imports of utility scale wind towers from the PRC and the Socialist Republic of Vietnam, one commissioner determined that an industry in the United States is threatened with material injury by reason of such imports and further determined that he would not have found material injury but for the suspension of liquidation, and three commissioners determined that an industry in the United States is not materially injured or threatened with material injury by reason of such imports.⁷ Because the ITC's determination that an industry in the United States is materially injured or threatened with material injury is not accompanied by a finding that material injury would have resulted but for the suspension of liquidation of entries since the *Preliminary Determination*, the Department determines that the "general rule" of section 706(b)(1) of the Act

⁵ See *Utility Scale Wind Towers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422 (June 6, 2012) (*Preliminary Determination*).

⁶ Section 736(b)(2) of the Act ("the Department shall release any bonds or other security made, and refund any cash deposit made . . . with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before {the date of the publication of the ITC's affirmative final injury determination}"); see, e.g., *Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Countervailing Duty Orders*, 75 FR 53642, 53643 (September 1, 2010) (where the Department ordered the termination of suspension and refund of duties for entries occurring prior to the publication of the ITC's affirmative threat determination).

⁷ See *ITC Report*.

does not apply.⁸ Therefore, in accordance with the “special rule” of section 706(b)(2) of the Act, the Department will instruct CBP to terminate the suspension of liquidation for entries of wind towers from the PRC entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC’s final determination and refund any cash deposit of estimated countervailing duties for these entries.

Suspension of Liquidation and Collection of Cash Deposit

In accordance with sections 705(c)(1)(B) and 706(b)(2) of the Act, the Department will instruct CBP to suspend liquidation on all entries of subject merchandise from the PRC made on or after the date of the publication of the ITC’s final affirmative injury determination.⁹ The Department will also instruct CBP to require a cash deposit for each entry of subject merchandise in an amount equal to the net countervailable subsidy rates noted below. These instructions suspending liquidation will remain in effect until further notice.

⁸ See *MBL (USA) Corp. v. United States*, 16 C.I.T. 108, 111-114 (1992) (finding that the Act requires the Department, when confronted with the same ITC voting pattern as present here, to refund duties collected prior to the ITC’s publication of its final injury determination).

⁹ The Department instructed CBP to discontinue the suspension of liquidation on October 4, 2012, four months after the publication of the *Preliminary Determination*, in accordance with section 703(d) of the Act. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of wind towers from the PRC made on or after October 4, 2012, and prior to the date of publication of the ITC’s final determination in the *Federal Register* are not liable for the assessment of countervailing duties because of the Department’s discontinuation, effective October 4, 2012, of the suspension of liquidation.

Final Determination of Countervailing Duty Investigation

Net countervailable subsidy rates noted below.

Producer/Exporter	Net Subsidy Ad Valorem Rate
CS Wind China Co., Ltd., CS Wind Tech (Shanghai) Co., Ltd., and CS Wind Corporation (collectively, CS Wind)	21.86 percent
Titan Wind Energy (Suzhou) Co. Ltd. (Titan Wind), Titan Lianyungang Metal Product Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Power Equipment Co., Ltd. (Titan Baotou), and Shenyang Titan Metal Co., Ltd. (Titan Shenyang) (collectively, Titan Companies)	34.81 percent
All Others	28.34 percent

This notice constitutes the countervailing duty order with respect to wind towers from the PRC pursuant to section 706(a) of the Act. This order is published in accordance with section 706 (a) of the Act and 19 CFR 351.211(b).

Paul Piquado
Assistant Secretary
for Import Administration

February 12, 2013

Date

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